

# State of South Dakota

## EIGHTIETH SESSION LEGISLATIVE ASSEMBLY, 2005

376L0624

### SENATE BILL NO. 206

Introduced by: Senators Sutton (Dan), Bartling, Broderick, Gant, Kelly, Moore, and Schoenbeck and Representatives Wick, Gassman, Haley, Heineman, McCoy, McLaughlin, Schafer, and Sebert

1 FOR AN ACT ENTITLED, An Act to prohibit the imposition of certain death sentences if the  
2 defendant is not a serious and continuing threat to the lives of others.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 23A-27A-7 be amended to read as follows:

5 23A-27A-7. Upon a verdict or judgment of death made by a jury or a judge, ~~it shall be the~~  
6 ~~duty of the judge presiding at the trial~~ shall conduct another presentence hearing separate from  
7 the presentence hearing provided for in § 23A-27A-2 and without a jury. The presentence  
8 hearing shall be conducted to hear additional evidence to determine whether, if the defendant  
9 were sentenced to life without parole in the custody of the Department of Corrections instead  
10 of being sentenced to death, the defendant would constitute a serious and continuing threat to  
11 the lives of others.

12 If the judge finds, by clear and convincing evidence, that the defendant, if sentenced to life  
13 without parole in the custody of the Department of Corrections, would constitute a serious and  
14 continuing threat to the lives of others, the judge shall proceed to sentence such convicted  
15 person to death and to make such sentence in writing, which shall be filed with the papers in the



1 case against such convicted person. A certified copy thereof shall be sent by the clerk of the  
2 court in which the sentence is pronounced to the warden of the state penitentiary, not less than  
3 ten days prior to the time fixed in the sentence of the court for the execution of the sentence.

4 Otherwise the judge shall sentence such convicted person to life without parole in lieu of  
5 the death penalty.